



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

**FP 2018-99, Env-Dw 101.04, Date of Incorporated Federal Regulations
Summary of Comments on Initial Proposal with DES Response
July 3, 2018**

The proposed rule would explicitly identify an edition date for all federal regulations incorporated in subtitle Env-Dw. Under the *Drafting and Procedure Manual for Administrative Rules*, if an edition date for a federal regulation is not specified and the agency has been designated as an agent of the federal government for the program, then the most current edition applies. However, the federal court for the District of New Hampshire held in an unpublished 2013 decision that the edition is the one in effect at the time the rule was adopted. Stating the date explicitly will reduce the potential for confusion and arguments. Also, EPA identified this as necessary to retain state primacy in its comments during the recent rulemaking for Env-Dw 717.

No members of the public attended the public hearing on June 19, 2018, and no written comments were received from the public or from EPA. The Office of Legislative Services, Administrative Rules office provided a comment that the Department should consider adjusting the title of Chapter Env-Dw 100 during the rule certification process, which the Department agrees to do.